

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
HAWAIIAN TELCOM, INC. and HAWAIIAN)
TELCOM SERVICES COMPANY, INC.)
For Expedited Interim and Permanent)
Approval of Security Arrangements)
Related to the Increase in Senior)
Revolving Credit Facility.)

DOCKET NO. 2007-0344

INTERIM ORDER NO. 23826

Filed Nov. 13, 2007
At 1 o'clock P.M.

Karen Higashi.
Chief Clerk of the Commission

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DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

Karen Higashi.

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Docket No. 2007-0344

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INTERIM ORDER

By this Interim Order, the commission grants HAWAIIAN TELCOM, INC. ("HTI") and HAWAIIAN TELCOM SERVICES COMPANY, INC.'s ("HTSC") (collectively, "Applicants") request for an expedited interim order authorizing Applicants to, upon written notice, increase or expand their existing security obligations following a specific "Triggering Event" for the purposes of allowing Applicants' direct parent, HT Communications, Inc. ("HT Communications"), to increase its existing senior revolving credit facility from \$90 million to \$200 million on a short-term basis.

I.

Background

A.

Joint Application

On October 17, 2007, Applicants jointly filed their Application¹ requesting expedited commission approval to increase their existing security obligations in connection with an increase in HT Communications' senior revolving credit facility.² The Application was filed pursuant to the requirements of HAR Title 6, Chapter 61, Subchapters 2, 6, 9, and 11; and commission approval is being sought under HRS §§ 269-7, 269-17, and 269-19, as applicable. Specifically, Applicants request the following:

1. Issuance of an interim decision and order authorizing Applicants to, upon written notice to the commission, increase or expand their existing security obligations following a specific "Triggering Event"³ for the purposes of allowing HT Communications to increase its existing senior revolving credit facility from \$90 million to \$200 million on a short-term

¹Applicants filed their Application; Verification; and Certificate of Service (collectively, "Application") on October 17, 2007.

²Applicants served copies of the Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), an ex officio party to this proceeding pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62. Applicants and the Consumer Advocate, the sole parties to this proceeding, are hereafter collectively referred to as the "Parties."

³Applicants define the "Triggering Effect" in footnote 12, page 10 of their Application. The content of footnote 12 was filed confidentially under Protective Order No. 23767, issued on October 25, 2007, in this docket.

basis ("Proposed Short-Term Financing Arrangement"). Applicants request issuance of a commission decision on the Proposed Short-Term Financing Arrangement by November 15, 2007.

2. If approved and upon closing of the directories publishing business transaction (subject of Docket No. 2007-0123) and more extensive review, issuance of a subsequent and final decision and order allowing Applicants to increase or expand their existing security obligations in connection with HT Communications' permanent increase of its existing senior revolving credit facility from \$90 million to \$200 million.

The commission's Interim Order herein will solely address Applicants' request related to the Proposed Short-Term Financing Arrangement. The matters regarding HT Communications' permanent increase in its senior revolving credit facility from \$90 million to \$200 million will be addressed in the commission's final decision and order in this docket.

1.

Applicants

The commission in March 2005 conditionally approved the merger transaction and other related matters described in the joint application filed by Paradise MergerSub, Inc., now known as HT Communications; GTE Corporation; Verizon Hawaii Inc., now known as HTI; Bell Atlantic Communications, Inc., dba Verizon Long Distance; and Verizon Select Services Inc. (referred

to herein as the "VH Merger").⁴ In sum, through the VH Merger transaction, control over HTI and certain related assets were transferred from various subsidiaries of Verizon Communications Inc. to HT Communications and its parent company, which are ultimately controlled by the TC Group L.L.C., dba The Carlyle Group, a Delaware limited liability company.

HTI, a wholly-owned subsidiary of HT Communications, is a Hawaii corporation with its principal place of business in Honolulu, Hawaii. HTI was originally chartered in 1883 under the Kingdom of Hawaii, and is a public utility, as defined by HRS § 269-1, subject to commission regulation under HRS Chapter 269. As the incumbent local exchange carrier ("ILEC") for the State of Hawaii ("State"), HTI provides local and intraLATA telecommunications services in Hawaii, on a statewide basis.

HTSC, a wholly-owned subsidiary of HT Communications and an affiliate of HTI, is a Delaware corporation with its principal place of business in Honolulu, Hawaii. HTSC is authorized to transact business in the State and is a telecommunications carrier as defined by HRS § 269-1. Currently, HTSC is authorized by the commission to provide resold telecommunications services and intrastate resold wireless telecommunications services (known as, commercial mobile radio

⁴In re Paradise MergerSub, Inc., et al., Docket No. 04-0140, Decision and Order No. 21696, filed on March 16, 2005 ("Decision and Order No. 21696").

services or "CMRS") in the State.⁵ Further, HTSC provides interstate toll service on a nationwide basis under the purview of the Federal Communications Commission. HTSC was formed through the VH Merger transaction and is currently in the process of divesting itself of the directory publishing business which is the subject matter of Docket No. 2007-0123.

2.

Proposed Financing Arrangement

In Decision and Order No. 21696, while conditionally approving the VH Merger transaction, the commission permitted certain financing and security arrangements entered into for the purpose of consummating the VH Merger. These arrangements included HT Communications obtaining a senior revolving credit facility ("Senior Revolving Facility"). HT Communications' Senior Revolving Facility "were and are secured by, among other things: (1) an unconditional guarantee by Applicants of HT Communications' obligations under the senior revolving credit facility, (2) a first priority pledge of all of the capital stock and equity interests of Applicants, and (3) a perfected first-priority with respect to security interests in, and mortgages on

⁵HTSC received its certificate of authority to provide resold telecommunications services in the VH Merger docket (see Decision and Order No. 21696 at 58-60) and later received its certificate of registration to provide CMRS in the State in Decision and Order No. 21892, filed on June 24, 2005, in Docket No. 05-0097.

substantially all tangible and intangible assets of Applicants" (collectively, referred to as the "Security Obligations").⁶

At this time, the total amount available to be drawn under HT Communications' Senior Revolving Facility is \$90 million.⁷ However, under HT Communications' loan agreements, it is allowed to increase the amount available under the Senior Revolving Facility to \$200 million without: (1) additional lender approval; (2) entering into any additional Security Obligations; and (3) executing any additional loan documentation. Applicants state that HT Communications desires to now increase its Senior Revolving Facility from \$90 million to \$200 million to allow it to "continue to construct, improve, add to and otherwise continue to invest in the facilities, technology and services of, and obligations incurred by, Applicants, as well as to have an immediate source of funds available to meet unexpected repairs or needs that may arise."⁸ Thus, Applicants request commission approval authorizing Applicants to increase or expand the scope of their existing Security Obligations related

⁶See Application at 7.

⁷According to Applicants, prior to Decision and Order No. 21696 approving the VH Merger transaction, it was contemplated that the amount of the Senior Revolving Facility would be \$150 million; however, due to restructurings of the financing amounts, the Senior Revolving Facility amount was ultimately reduced to \$90 million, with the option for HT Communications to increase the threshold to \$200 million. Additional details are set forth in footnote 10 of page 8 of the Application.

⁸See Application at 8.

to HT Communications' permanent increase of its existing Senior Revolving Facility.

However, in the interim, Applicants request expedited commission action regarding the Proposed Short-Term Financing Arrangement to "ensure the availability of sufficient immediate funds that may be required for planned and unplanned needs."⁹ If so approved and increased, Applicants and HT Communications agree that any amounts drawn from the Senior Revolving Facility, upon written notice, will be paid down from the proceeds of the directories publishing business and that HT Communications thereafter will not draw down any funds from the Senior Revolving Facility exceeding the \$90 million threshold until commission approval is received allowing Applicants to increase or expand the scope of their Security Obligations in connection with HT Communications' permanent increase of its Senior Revolving Facility from \$90 million to \$200 million. Applicants represent that the issuance of the written notice, related to the Proposed Short-Term Financing Arrangement, and increase in HT Communications' Senior Revolving Facility would only occur following the "Triggering Event" and if Applicants or HT Communications, at that time, determine that it would be prudent for the Senior Revolving Facility amount be increased from \$90 million to \$200 million on a short-term basis.

Applicants assert that the Proposed Short-Term Financing Arrangement (and proposed financing arrangement on a

⁹Id. at 9.

permanent basis) are for permitted purposes under HRS § 269-17. Moreover, Applicants contend that approval of the Proposed Short-Term Financing Arrangement (and proposed financing arrangement on a permanent basis) will serve the public interest. Applicants maintain that approval of the Proposed Short-Term Financing Arrangement would enable Applicants to "continue to ensure that they have access to sufficient funds on an immediate basis to address planned and unplanned expenditures and investments, even if the Triggering Event occurs."¹⁰ Moreover, Applicants maintain that the proposed increase or expansion of Applicants' existing Security Obligations will be transparent to Applicants' customers and that customers would benefit from Applicants' ability to assure them continued receipt of quality telecommunications services at competitive prices.

B.

Consumer Advocate's Position

On October 31, 2007, the Consumer Advocate filed its Statement of Position ("Position Statement") stating that it does not object to commission approval of the Proposed Short-Term Financing Arrangement.¹¹ However, the Consumer Advocate states

¹⁰Id. at 10.

¹¹The Consumer Advocate's Position Statement was filed on or about 12:01 p.m. on October 31, 2007. At or about 2:50 p.m. on the same day, a member of the Consumer Advocate's staff telephoned commission staff to indicate that an error existed on the first page of its statement. According to staff of the Consumer Advocate, the reference to "\$990 million" set forth on the first page of the Position Statement should be corrected to "\$90 million."

that it is unable to presently provide a recommendation on Applicants' request related to the permanent increase in HT Communications' Senior Revolving Facility since it needs additional information regarding this aspect of the Application and intends to serve Applicants with discovery requests.

In sum, the Consumer Advocate does not object to the approval to increase the existing Security Obligations under the Senior Revolving Facility as requested on an interim basis for the following reasons:

1. "[T]he commitment associated with the increase in Security Obligations is expected to exist for a short time period (i.e., less than one year)"¹²;
2. The increase in the Senior Revolving Facility and "corresponding increase in the Security Obligations are expected to provide assurance that funds are available, if needed, to meet unexpected repairs or needs that may arise"¹³; and
3. The potential drawdown of funds under the Senior Revolving Facility is not expected to have a long-term impact on Applicants' capital structure since the drawn down is expected to be repaid within a year.¹⁴

¹²See Consumer Advocate's Position Statement at 4.

¹³Id. at 5.

¹⁴Id.

On the other hand, the Consumer Advocate expressed specific concerns regarding Applicants' request associated with the permanent increase in the Senior Revolving Facility. For instance, the Consumer Advocate states that Applicants have not explained why the increase in the threshold for the Senior Revolving Facility from \$90 million to \$200 million is reasonable in light of representations made in Docket No. 2007-0123 that proceeds from sale of the directories publishing business will be used to pay down existing debt. The Consumer Advocate makes clear, however, that its initial concern "should not impact the timely issuance of the [c]ommission's Decision and Order in Docket No. 2007-0123 since such approval is critical to consummating the pending sale of the directories publishing business."¹⁵ The Consumer Advocate asserts that its stated concern should be addressed in the instant docket in which the commission has the authority to allow the increases in the thresholds being sought by the Applicants.

Moreover, the Consumer Advocate questioned certain information filed in support of Applicants' representations and contends that Applicants had not provided information regarding the nature of the projects that are expected to be financed through the funds drawn down from the Senior Revolving Facility. Thus, while not objecting to an approval of the Proposed Short-Term Financing Arrangement, the Consumer Advocate recommends that no action be taken at this time regarding the permanent increase

¹⁵Id. at 6.

in the thresholds of the Senior Revolving Facility and the related Security Obligations.

II.

Discussion

The commission is conferred with the supervision and regulation of "all public utilities" and the administration of HRS chapter 269.¹⁶ Specifically, under HRS § 269-19, prior commission approval is required before a public utility mortgages, disposes of, or encumbers, among other things, the whole or any part of its property necessary in the performance of its duties to the public. Specifically, HRS § 269-19 states as follows:

No public utility corporation shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its road, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit, or any right thereunder, . . . without first having secured from the public utilities commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation, made other than in accordance with the order of the commission shall be void.

HRS § 269-19 (emphasis added).

Prior commission approval is also required under HRS § 269-17, before a public utility can issue stocks and stock certificates, bonds, notes and other evidences of indebtedness, payable at periods of more than one year after issue.

¹⁶See HRS § 269-6.

HRS § 269-17, restricts the purpose for which stocks and other evidences of indebtedness may be issued to: (1) acquisition of property; (2) construction, completion, extension, or improvement of or addition to its facilities or service; (3) discharge or for the lawful refunding of its obligations; and (4) reimbursement of moneys actually expended for the purposes noted above.

Furthermore, HRS § 269-7(a) authorizes the commission to examine the condition of every public utility including all of its financial transactions and its business relations with other persons, companies, and corporations.¹⁷

Having reviewed Applicants' request and the record established thus far, the commission finds the Proposed Short-Term Financing Arrangement to be reasonable and consistent with the public interest. As the Consumer Advocate notes, the commitment related to the increase in Applicants' Security

¹⁷Specifically, HRS § 269-7(a) states, in relevant part, the following:

The public utilities commission . . . shall have power to examine into the condition of each public utility, the manner in which it is operated with reference . . . the issuance by it of stocks and bonds, and the disposition of the proceeds thereof, the amount and disposition of its income, and all its financial transactions, its business relations with other persons, companies, or corporations, its compliance with all applicable state and federal laws and with the provisions of its franchise, charter, and articles of association, if any, its classifications, rules, regulations, practices, and service, and all matters of every nature affecting the relations and transactions between it and the public or persons or corporations.

Obligations contemplated under the Proposed Short-Term Financing Arrangement should only exist for a short period of time, expected to be less than one year. Thus, it is reasonable to surmise that the draw down of additional funds would not have a long-term impact on Applicant's capital structure. The commission's reasoning is also based on Applicants' representations set forth in the Application that:

- (1) Any amounts drawn from the Senior Revolving Facility subsequent to providing written notice will be paid down with the proceeds from the sale of the directories publishing business¹⁸;
- (2) Then, no additional funds beyond the \$90 million balance will be drawn down from the Senior Revolving Facility until final commission decision is received allowing Applicants to increase or expand the scope of their Security Obligations in connection with HT Communications' permanent increase of its Senior Revolving Facility from \$90 million to \$200 million¹⁹; and
- (3) The issuance of the written notice, related to the Proposed Short-Term Financing Arrangement, and increase in HT Communications' Senior Revolving Facility under the short-term approval would only

¹⁸See Application at 9.

¹⁹Id.

occur following the occurrence of the "Triggering Event" and if Applicants or HT Communications, at that time, determine that it would be prudent to do so.²⁰

Moreover, the increase in the Senior Revolving Facility and corresponding increase in Applicants' Security Obligations, on a short-term basis, are expected to provide assurance that Applicants have access to necessary funds to meet unexpected service repairs and needs that may arise. As the Consumer Advocate states "[a]s the ILEC, HTI serves as the focal point for the provision of competitive communications service by carriers authorized to provide telecommunications service in the State. Thus, HTI must be able to have sufficient funds to repair its system and obtain services that are necessary in the provision of its regulated telecommunications services."²¹ The commission agrees with the Consumer Advocate's assessment.

Based on the foregoing, the commission concludes that the Proposed Short-Term Financing Arrangement, described in the Application, should be approved.

III.

Orders

THE COMMISSION ORDERS:

1. The Proposed Short-Term Financing Arrangement, described in the Application, is approved.

²⁰Id.

²¹See Consumer Advocate's Position Statement at 5.

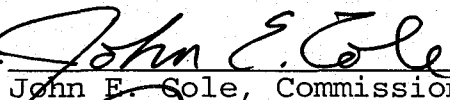
2. Applicants shall adhere to the representations they made on page 9 of their Application regarding the Proposed Short-Term Financing Arrangement, which are summarized in Section II of this Interim Order.

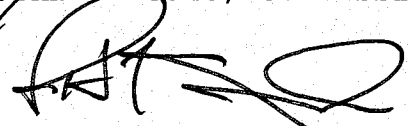
3. Failure to comply with any of the representations referred to in paragraph no. 2, above, may constitute cause to void this Decision and Order, and may result in further regulatory action as authorized by State law and commission rules and regulations.

DONE at Honolulu, Hawaii NOV 13 2007.

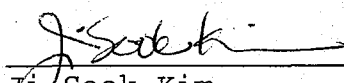
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By: 
Carlito P. Caliboso, Chairman

By: 
John E. Cole, Commissioner

By: 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Ji Sook Kim
Commission Counsel

2007-0344.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Interim Order No. 23826 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

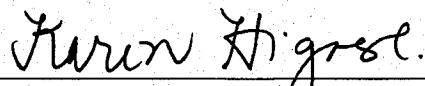
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Karen Higashi

DATED: NOV 13 2007